Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992	)	MM Docket No. 92-266
	)	
Rate Regulation	)	

To: The Commission - Mail Stop 1170

COMMENTS OF THE COMMUNITY BROADCASTERS ASSOCIATION

1. These Comments are filed on behalf of the Community Broadcasters Association ("CBA") in response to the Commission's Notice of Proposed Rule Making ("Notice") in the above-captioned proceeding, FCC 92-544, released December 24, 1992. CBA is a trade association representing the interests of licensees and permittees of low power television (LPTV) stations throughout the nation.

2. CBA's Comments are directed in particular to rates charged by cable television systems for leased commercial access, as discussed at paragraphs 144-173 of the Notice. Leased commercial access is critical to the LPTV industry, because LPTV stations have very limited must-carry rights, and leased access is frequently the only way they can secure cable carriage. Frequently, an LPTV station is the only source of local video programming in a political jurisdiction or in a minority or ethnic community; but where a cable system has high penetration, the LPTV station may be doomed to economic failure unless it can obtain a channel on the cable system. It is very much in the public interest to ensure the preservation of local service by LPTV stations, and the Commission should make sure that cable

operators do not defeat the public interest by unreasonable practices that put leased channel access out of reach for LPTV operators.

3. CBA's concerns about leased channel access are well founded. Stories abound in the LPTV industry about serious discrimination against LPTV stations seeking leased access, even when channels lie vacant. Wanting to silence competition in the sale of local advertising, cable systems have been known to demand in excess of a million dollars a year for granting access to an LPTV operator, even when they would lease the same channel to another commercial business for a fraction of that amount. Some cable operators have simply stated that leased access rules do not apply when it is a broadcaster who seeks that access -- a position that is not justified under current or even pre-1992 law, but one that has been asserted nevertheless.

4. The 1992 Cable Act clearly signifies an intent by Congress to put a stop to these unreasonable practices, and the Commission's rules should reflect and carry out that intent. It is CBA's view that cable systems should be required to charge all users the same amount for leased access; but given the apparent intent of Congress to allow lower rates for nonprofit and educational services, it should nevertheless be a cardinal rule that similarly classified users should be treated the same, and the fact that a party seeking leased channel access happens to operate an LPTV station is not a valid separate classification justifying a higher rate than would be charged to a purveyor of similar programming that is not broadcast on an LPTV station. Indeed, CBA suggests that the presentation of local programming by an LPTV station is of so much public importance that leased access for stations with a significant amount of such programming should be provided at the same kind of preferential rates

contemplated for non-profit and other groups whose service provides special public interest benefits.

5. To the extent that the Commission adopts a benchmark approach based on a market rate concept, reasonable limits must still be placed on charges for leased channel access. There should be a strong presumption that if channels are offered for lease but remain untaken because prospective users claim they cannot afford the price, then the price is unreasonably high and does not meet a market test. In other words, a true "market" rate for an individual cable system must be one on which both a buyer and a seller agree; otherwise, the rate is by definition above "market."

6. Finally, the Commission should adopt its proposals to regulate the technical standards for leased access channels to ensure that the quality of the signal is equal to that provided on the basic broadcast tier or other channels similar to leased access channels. A cable operator should not be able to cripple what it may view as competition from a leased access channel operator by degrading, or not maintaining the quality of the leased channel. Leased channels should also not be relegated to the least desirable location on the tuner or converter box, and LPTV stations with local programming should in no case be relegated to the most obviously undesirable channels.1/

1/ Indeed, given the importance and value of local programming to small communities and minority and ethnic groups, service providers who present locally originated material should be given priority in access and price to commercial leased access channels

7. Leased channel access is the outlet of last resort for important public services that cannot find their way on to cable by other means. The number of channels which must be reserved for such access is limited. But that group of channels must be made available in good faith, at reasonable prices, and with high quality technical standards and must not manipulated to cut off competition in local programming and/or advertising.

Respectfully submitted,
COMMUNITY BROADCASTERS ASSOCIATION

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